



Forthcoming Grand Chamber judgment in the case of Selahattin Demirtaş v. Turkey (no. 2)

The European Court of Human Rights will be delivering a **Grand Chamber** judgment¹ in the case of **Selahattin Demirtaş v. Turkey (no. 2)** (application no. 14305/17) in writing on 22 December 2020 at 3 p.m. in the Human Rights Building, Strasbourg.

The case concerns the arrest and pre-trial detention of Mr Selahattin Demirtaş, who at the time of the events was one of the co-chairs of the Peoples' Democratic Party (HDP), a left-wing pro-Kurdish political party.

Principal facts and complaints

The applicant, Mr Selahattin Demirtaş, is a Turkish national who was born in 1973. At the time of lodging his application he was detained in Edirne (Turkey).

At the time of the events, Mr Demirtaş was one of the co-chairs of the Peoples' Democratic Party (HDP), a left-wing pro-Kurdish political party. Between 2007 and 2018 he was a member of the Turkish Grand National Assembly ("the National Assembly"). He stood in the 2014 and 2018 presidential elections and received 9.76% and 8.32% of the vote respectively.

In September and October 2014, members of the armed terrorist organisation Daesh (Islamic State) launched an offensive on the Syrian town of Kobani, some 15 km from the Turkish border town of Suruç. Armed clashes took place between Daesh forces and the People's Protection Units (YPG), an organisation founded in Syria and regarded as a terrorist organisation by Turkey on account of its links with the PKK (Workers' Party of Kurdistan).

From 2 October 2014 onwards, a large number of demonstrations were held across Turkey and several non-governmental organisations published statements calling for international solidarity with Kobani against the siege by Daesh.

From 6 October 2014 onwards, the demonstrations became violent, resulting in the death of 50 people and injuries to hundreds of others.

Towards the end of 2012, a peace process known as the "solution process" had been initiated with a view to finding a lasting, peaceful solution to the Kurdish question.

Parliamentary elections were held on 7 June 2015, and for the first time a pro-Kurdish party passed the threshold for representation in the National Assembly. The HDP received 13.12% of the vote and became the second-largest opposition party. The AKP (Justice and Development Party) lost its majority in Parliament for the first time since 2002.

In the months following the elections, Turkey was hit by a series of terrorist attacks, allegedly committed by the PKK and Daesh. The day after a terrorist attack on 22 July 2015, resulting *de facto* in the end of the "solution process", armed clashes resumed between the security forces and the PKK.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Following the failure to form a coalition government, early elections were held on 1 November 2015, in which the HDP polled 10.76% of the vote. The AKP won the elections and regained its majority in the National Assembly.

On 20 May 2016 the National Assembly passed a constitutional amendment whereby parliamentary immunity was lifted in all cases where requests for the lifting of immunity had been transmitted to the National Assembly prior to the date of adoption of the amendment. The amendment affected a total of 154 members of parliament.

After the constitutional amendment had come into force, the Diyarbakır public prosecutor decided to join together 31 separate criminal investigations in respect of Mr Demirtaş as a single case. Between July and October 2016 the competent public prosecutors issued six separate summonses for him to give evidence. However, Mr Demirtaş did not appear before the investigating authorities.

On 4 November 2016 the security forces carried out operations against twelve HDP members of parliament, including Mr Demirtaş, who were arrested and taken into police custody. Later that day the Diyarbakır 2nd Magistrate's Court ordered the pre-trial detention of Mr Demirtaş for membership of an armed terrorist organisation and public incitement to commit an offence.

From 8 November 2016 onwards Mr Demirtaş lodged several objections against his pre-trial detention. The domestic courts examined the matter of his detention more than sixty times. On each occasion until 2 September 2019, they ordered his continued detention.

On 2 February 2017 the Diyarbakır Assize Court accepted a bill of indictment filed by the public prosecutor, who had sought a sentence of between forty-three and 142 years' imprisonment for the applicant, mainly for terrorism-related offences. On 22 March 2017 the Court of Cassation transferred the case to the Ankara Assize Court.

On 7 December 2017 the Ankara 19th Assize Court held its first hearing in the case.

In the meantime, the Istanbul public prosecutor's office had opened a criminal investigation in respect of Mr Demirtaş, who was accused of disseminating propaganda in favour of a terrorist organisation. At the end of those criminal proceedings, in a judgment of 7 September 2018 the Istanbul Assize Court sentenced him to four years and eight months' imprisonment for disseminating propaganda in favour of a terrorist organisation on account of a speech he had given at a rally in Istanbul on 17 March 2013. On 7 December 2018 Mr Demirtaş began serving his sentence of four years and eight months' imprisonment.

On 2 September 2019, in view the fact that Mr Demirtaş had finished filing his defence submissions, the Ankara Assize Court decided to release him from pre-trial detention on condition that he was not detained or convicted in separate proceedings. However, he remained in detention as a result of his conviction in the criminal proceedings in the Istanbul courts.

Following the decision of 2 September 2019 to release Mr Demirtaş, on 20 September 2019 the Istanbul 26th Assize Court ruled, further to an application by his lawyers, that the days he had spent in pre-trial detention should be deducted from the final sentence imposed by the Istanbul Assize Court. As a result of that decision, Mr Demirtaş should have been eligible for conditional release.

On the same day, the Ankara public prosecutor's office applied to the Ankara Magistrate's Court to have the applicant and Ms Figen Yüksekdağ (also a former co-chair of the HDP) placed in pre-trial detention in the context of a separate criminal investigation initiated in 2014 in relation to the events of 6 to 8 October 2014, on suspicion of offences including: undermining the unity and territorial integrity of the State; incitement to commit murder; and incitement to commit armed robbery in order to assist a criminal organisation. Later that day, the Ankara 1st Magistrate's Court ordered the pre-trial detention of Mr Demirtaş and Ms Yüksekdağ.

On 31 October 2019, further to a request by the applicant, the Istanbul Assize Court stayed the execution of his sentence of four years and eight months' imprisonment and ordered his release on

condition that he was not detained in separate proceedings. However, Mr Demirtaş remained in prison as a result of the order of 20 September 2019 for his pre-trial detention. The applicant is currently deprived of his liberty on the basis of that order alone.

On 21 December 2017 the Constitutional Court gave a first ruling concerning Mr Demirtaş's pre-trial detention, declaring his application inadmissible.

In a further judgment delivered on 9 June 2020 the Constitutional Court held, unanimously, that there had been a violation of Article 19 § 7 of the Constitution (corresponding to Article 5 § 3 of the Convention) on account of the length of time Mr Demirtaş had spent in pre-trial detention. It pointed out that it had previously found in its decision of 21 December 2017 that there had been a strong suspicion that an offence had been committed. However, examining the decisions ordering the continued detention of Mr Demirtaş in terms of the grounds for and proportionality of that measure, it concluded that the decisions to extend his detention had not contained relevant and sufficient reasons.

As regards his current pre-trial detention, Mr Demirtaş has lodged a further application with the Constitutional Court, which is still pending before it.

Relying on Article 10 of the Convention, the applicant complains of a violation of his right to freedom of expression. Under Article 5 §§ 1 and 3, he submits that there was no evidence giving rise to a reasonable suspicion that he had committed a criminal offence necessitating his pre-trial detention. He also alleges that the judicial decisions on his detention were worded in abstract, repetitive and formulaic terms. Relying on Article 5 § 4, he submits that the proceedings in the Constitutional Court did not comply with the requirements of the Convention and that the requirement of "speediness" was not observed. The applicant complains that his pre-trial detention also amounted to a violation of Article 3 of Protocol No. 1. In addition, relying on Article 18, he alleges that he was detained for expressing critical opinions about the political authorities and that the purpose of his pre-trial detention was to silence him.

Procedure

The application was lodged with the European Court of Human Rights on 20 February 2017. A Chamber [judgment](#) was delivered on 20 November 2018. On 19 February 2019 the applicant and the Government each requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber). On 18 March 2019 the panel of the Grand Chamber accepted their respective requests. A [hearing](#) was held on 18 September 2019.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.